

# UNIFORM CIVIL CODE: PERSONAL LAWS IN JEOPARDY

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## INTRODUCTION

Under the Constitution of India, Article 44 talks about the implementation of the uniform civil code throughout the territory of India. It is mentioned under the Directive Principles of State Policy (Part IV). The implementation of such code would result in unification of all customs and religious practices resulting in the sidelining of the existent personal laws governing marriage, divorce, inheritance and so on. It would create a circumstance where personal laws shall be same for every person, irrespective of their caste, creed, religion and gender. This paper focuses on the perspectives brought forward against the implementation of a Uniform civil code and analyses various reasons and circumstances that would be brought to life if such uniformity with respect to personal laws is brought into force in India.

## UNDER WHAT HISTORICAL CONTEXT WAS THIS ARTICLE INCORPORATED?

Article 44 says that “The state shall endeavor to secure for all the citizens a uniform civil code throughout the territory of India.” It is neither binding upon the citizens and nor is it mandatory for the state to apply this principle as it is mentioned under the Directive Principles, which act as guidelines for the State for better and smooth functioning along with the welfare of its citizens. The implementation of this Code started by way of a slow process during the British rule in India. Various acts were passed during this period in order to bring about religious stability and uniformity with a main aim of easier administration by the British. Some of the laws passed during this period were:

1. Indian Succession Act, 1865

2. The Indian Marriage Act, 1864
3. Hindu Widow Remarriage Act, 1856
4. Married Women's Property Act. 1923
5. Hindu Inheritance (Removal of Disabilities) Act, 1928

## WHAT WAS THE AIM OF IMPLEMENTING A UNIFORM CIVIL CODE?

The main aim of bringing about Uniform Civil Code into practice was to eliminate the redundancies in various personal laws and replacing them with more neutral and time compliant laws. However, being a secular country housing millions of individuals from varying cultures and religious ethnicities, it is not possible to establish a uniform personal law for every person to follow in India.

## WHY IS IT NOT SUITABLE FOR A COUNTRY LIKE INDIA?

'One Nation, One Law' is not what our constitution envisages. Uniform Civil Code can be seen as a move against secularism. In the case of *S.R. Bomai v Union of India*<sup>1</sup>, the Hon'ble Supreme court explained the importance of the concept of Secularism by stating that "*The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system.*" The Preamble to the constitution also states that India is a socialist, **secular**, democratic republic. In a country as diverse as India, with diverse languages, traditions, customs and ethnicities, it is nearly impossible to implement a uniform law for everybody. Being such a vast country, the constitution needs to protect every right, either of the majority or minority in every way possible. Certain rights are guaranteed to every citizen under the Indian constitution which cannot be taken away by the state. A lot of rights for the minority communities have also been elaborated in order to safeguard them from being overpowered by the majority population. A very strong and popular argument made against the implementation of the Uniform Civil code

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<sup>1</sup> (1994) 3 SCC 1

is that it will infringe highly upon the varying personal laws of different religious sects. For example, imposing Hindu laws upon Muslims, or vice versa would create a disturbance amongst the religious practices governing their activities. Hence, uniformity in law will result in a violation of personal laws that are currently being followed nationwide in different communities. Along with this, various debates have given rise to the question of what law will be adequate for being implemented in uniformity, and what law would have to be discarded. This involves the question of right and wrong. Developing a code that is acceptable to all communities alike is close to an impossible task.

## **WHAT ARE THE VARIOUS PERSPECTIVES THAT HAVE BEEN BROUGHT TO LIGHT REGARDING THE ARGUMENTS AGAINST A UNIFORM CIVIL CODE?**

Highlighting these issues and oppositions regarding the implementation of the Uniform civil code, various perspectives with regard to the unjust nature of a possible Uniform Code have come into picture:

### 1. Feminist Perspective

In order to formulate a uniform civil code for India, Laws considering women will have to be taken into account from different religious practices followed across communities. This multiple law consideration may at some point, lead to a contradiction and conflict between the provisions. This may happen due to the fact that personal laws across religions portray women in different light and confer different rights upon them. It will be a challenge to decide the just or unjust nature of such laws. In order to avoid such contradiction, if rights to women are completely excluded from the purview of the Uniform Civil Code, it would create an even bigger risk to the implementation of such uniform law.

### 2. Religious Perspective

Almost all personal laws in India are based upon customs and religious practices. Following them is considered to be a sacred activity which is has been in practice for

generations in a particular family. Therefore, the implementation of a Uniform code that brings a rest to all these customary rites and rituals may be considered as an intrusion by the government or the state into the personal matters of an individual or a group of individuals. It is a popular argument that is being repeatedly made that personal laws are followed religiously by communities and they should not be interfered with by way of a uniform code.

### 3. Political Perspective

Various sections of the society fear that by way of implementation of a uniform civil code, the majoritarian religion in the country would be imposed on the population throughout. This would be highly influenced by the popular political parties and would serve as a platform to spread their ideologies and beliefs. The misuse of a Uniform Civil Code will be rampant throughout the nation as it will give political parties the power to impose religious beliefs and practices without restraint. This will further lead to a situation of chaos due to the very fact that such implementation will violate and infringe the rights of the citizens which are so clearly guaranteed by the constitution right now.

## **EXAMPLES ELABORATING THE DRAWBACKS THE UNIFORM CIVIL CODE IF IMPLEMENTED**

The uniform civil code would pose as a threat to the Pluralistic fabric of India and will be detrimental to the communal harmony along with going against the ethos of the religious freedom provided to its citizens. The Uniform code is equally harmful to minorities of all kinds and none of these communal groups would stand in the favor of getting their customary practices annulled. There can be considered various practical examples that would portray the effects of a Uniform Civil code in India. Considering the **Hindu Law** as an example, there are various amendments that have been passed over the years to remove discrepancies within the practices followed under this personal law, like the Hindu Marriage Act (1955) along with acts related to inheritance and divorce. These laws unified certain provisions to be applicable to all Hindus following the practices mentioned thereunder, but even after such unification, it opens a window of exceptions and special considerations for those sects who follow certain

customary practices not prescribed under the codified law. For Example, in southern India, marriage amongst certain Sapinda relationships is allowed by way of custom even though they are prohibited under the Hindu Marriage Act, 1955. In case of an application of a Uniform Civil Code, the decision about which practice should be given a validated status and which practice shall be rendered void would create unrest and confusion amongst the communities that abide by these personal laws. Another example can be that the **Tribal States of North Eastern India** along with **Mizoram and Assam**. There has been a history of unrest and dissatisfaction amongst the Naga People towards the Centre. This led to the demand of 'Naga Sovereignty' and was a huge movement of insurgency. To bring this to a halt, there was an agreement reached that went by the words "No Act passed by the Union Parliament affecting the following provisions shall have legal force in Nagaland unless specially applied to it by a majority vote of Nagaland Legislative Assembly:"

- (a) The religious or Social Practices of the Nagas.
- (b) The customary Laws and Procedure
- (c) Civil and Criminal Justice so far as these concern decision according to the Naga Customary Law.

In the state of Mizoram, a similar agreement was implemented by way of the Sixth Schedule of the Indian Constitution that was also enforceable to other north eastern states of Meghalaya, Tripura, Arunachal Pradesh and Manipur.

Therefore, by way of a Uniform Civil Code, a contradiction will be drawn between the provisions of Article 44 and the provisions of Naga Agreement and the Sixth Schedule. The personal laws that have been specifically provided to these territories by the constitution itself would have to be taken away, further creating a situation of unrest and insurgency within these states.

## HOW HAS THE COURT ELABORATED ITS STANCE WITH REGARD TO A UNIFORM CODE IN INDIA?

As we know there are numerous High Court & Supreme Court judgments which have an impact on the Uniform Civil Court (UCC) in India. The judiciary through its judgments has always upheld gender justice in cases related to UCC. There are many cases which came before the court for providing gender justice for the injustice created by the religion's personal laws. Some of the cases which deals with the conflict between different personal laws and case laws are- In the case of *Narasu Appa Mali v State of Bombay*<sup>2</sup> there was a Hindu man who performed bigamy and contended that if a Muslim man can perform bigamy in India then why he is punishable for the performance of bigamy in India. He further argued that Article 14 (Right to equality) is violated as no equal treatment between them. Court held that religious personal laws gets immunity from constitutional challenge and there is a differential treatment for different religious groups. So by referring to this case mentioned above we can see that a person's personal laws are given more superiority than other laws. Moreover in the case of *Commissioner Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Matt*<sup>3</sup> it was held that Article 25 of Indian Constitution not only protects the religious opinion but also religious practices. By referring to the famous case of *Mohd Ahmed Khan v. Shah Bano Begum*<sup>4</sup>, we observed that SC spoke through Y.V. Chandrachud, the then Chief Justice held that the Section 125 of the CrPC is applicable also to the Muslims and that even a Muslim husband is also liable to maintain his divorced wife beyond the Iddat period. The controversy began which is likely to take place and the parliament has passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 to overrule the judgment in the Shah Bano Case. The effect of this act is that a Muslim husband is not liable to maintain his divorced wife beyond the Iddat period unless both the spouses submit to the court at the appropriate time that they would like to be governed by the CrPC. This is like having the provision but not using it for the sake of protection of the Personal law space. It is difficult in a diverse country like India to uniform personal and civil laws. In the famous case of *Sarla Mudgal v UOI*<sup>5</sup> also Court held

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<sup>2</sup> AIR 1952 Bom 84

<sup>3</sup> 1954 AIR 282

<sup>4</sup> 1985 SCR (3) 844

<sup>5</sup> 1995 AIR 1531

that no Hindu person can convert into other religion for the sole purpose to perform the practice of Bigamy. By referring to these cases we see how cases come up to provide gender justice but it is difficult that the personal laws are replaced by a Uniform Civil Code. However in another case there was a question that Article 14 is violated- *John Vallatmatam v UOI*<sup>6</sup> where Christians are prohibited to give land for charity purposes mentioned in their personal laws but others religions are allowed. Court held that for different religion their personal laws will be applied in case of civil matters.

By referring to all the cases mentioned above we can see that enacting UCC is remote possibility in India. Any attempt by Hindu majority parliament will be accompanied by the elements of distrust, suspicious, fear and insecurity among the minorities in India. There is no such guarantee that UCC will result in protection of unity and integrity of Nation but 'Communal Harmony' does and also the ideal of federal constitution is preserved by accommodating diversity.

Upon Summarizing and producing an overview of the entire article, we can come to a conclusion stating the following:

Articles 14-24 under fundamental rights in the Indian Constitution advocate individual rights to equality and freedom while Articles 25-30 talk about protection of religious freedom and education and culture rights of minorities. The religious groups in India derive their right to follow and abide by their personal laws from the provisions stated under Articles 25 to 30 of the Constitution. By the Implementation of a Uniform Code, this constitutional provision will be subject to a huge contradiction. The aim of law reforms in the realm of personal laws should be the **uniformity of rights, and not uniformity of laws**. It is agreed that various provisions in different personal laws are gender unjust and need to be reformed and eliminated entirely. But, it should be taken into view that this unjust nature of personal laws is not common across all disciplines, each unjust law is unjust in a way different from the other. Therefore, a solution to this problem cannot be the implementation of one uniform law to be followed by all. This can be explained by taking examples from Hindu, Muslim and Christian laws relating to the concept of Marriage:

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<sup>6</sup> AIR 2003 SC 2902

In the Hindu law, the custom of *Kanyadaan* is practiced where the daughter is “given away” by the father to the family of the husband. This, under Section 7 of the Hindu Marriage Act is considered to be an essential practice. Hindu marriages are considered to be Sacrament and hence, even after the pressure of dowry, women, instead of getting a divorce, chose to stay married. In the Muslim law, the concept of Mehr exists where a husband is required to submit a certain sum of money to the wife during marriage for her future security. This is more advantageous to the woman in comparison to the dowry system under the Hindu law. In the Christian law, till the year 2001, getting a divorce was a difficult process because mutual consent was not considered a valid ground for the same.

Therefore, looking at such examples, it can be clearly deduced that the nature of just and unjust laws across religions differ from each other and there is no possible common solution to the same. In addition to this, India is a signatory to a convention under the UN Declaration of Human Rights, 1948 that gives the right to each individual to follow and practice their own religion. In addition to this, section 16 of the CEDAW<sup>7</sup> deals with personal laws by way of which it was felt that a Uniform Civil Code cannot be enforced in a country with such diversity. If national integrity is considered to be an aim of the state that is planned to be achieved through the implementation of this Uniform Code, the government needs to adopt a different approach because it is very difficult to bridge the gap to bring about a consensus amongst a population of billions with respect to one law governing all religious practices. Therefore, it can be said that in a society that is growing constantly with a degree of increased communality, it is not possible to bring about a uniform code to govern all citizens with respect to practices that they derive from their religious texts and scriptures.

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<sup>7</sup> Convention on the Elimination of all forms of Discrimination Against Women, 1993